



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

AMENDED DECISION

CWK/166287

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 27, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the St. Croix County Health & Human Services in regard to Medical Assistance, a hearing was held on June 17, 2015, at New Richmond, Wisconsin. This is an amended decision that corrects a typographical error in the original decision's Conclusions of Law.

The issue for determination is whether the petitioner continues to require support at the level of care needed to remain in the Children's Long-Term Support Waiver.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Jenna Clark

St. Croix County Health & Human Services  
1752 Dorset Lane  
New Richmond, WI 54017-1063

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of St. Croix County.

2. The county agency denied the petitioner's request to participate in the Wisconsin Children's Long-Term Support Medicaid Waiver after determining that he does not require the level of care generally found in an institution.
3. The petitioner is a four-year-old boy diagnosed with autism.
4. The petitioner is somewhat uncoordinated but has no significant physical problems. His intelligence is at or above the normal level.
5. Testing from February 10, 2015, indicate that the petitioner's expressive language score was 99 and his receptive language score was 97. He uses sentences with up to six words. He has trouble following instructions with more than one step.
6. The petitioner does not take any prescription medication. He takes melatonin to help fall asleep.
7. The petitioner has frequent temper tantrums with adults and children if imaginative play is not done exactly as he wants it to be done or if toys are not put in exactly the right spots.
8. The petitioner lacks an awareness of danger.
9. The petitioner does not take turns while playing but does allow others to help in activities throughout the day. He does not recognize other children's emotions.
10. The petitioner is occasionally rough with the family pets, which puts him and the pets at risk.
11. The petitioner sometimes hits, bites, scratches, and kicks. These instances occur more during transition periods such as when he is returning from his father's house.
12. The petitioner requires monitoring while eating to prevent choking. He requires help getting in and out of the bathtub, washing his hands, and putting his clothing on. The help he receives putting his clothing on does not include help with fasteners such as buttons, zippers, and snaps. His school reports that he washes his own hands with a prompt.
13. The petitioner is combative when entering the bathtub but calms down once in it. He is also combative when brushing his teeth, but one parent can control him.
14. The petitioner can move about, transfer himself, and use the toilet without assistance.

### **DISCUSSION**

The petitioner is a four-year-old boy diagnosed with autism. He seeks medical assistance under the Children's Long-Term Support Waiver (CLTS) for four years. To qualify, he must be part of one of the three waiver target groups: children with developmental disabilities, children with physical disabilities, and children with severe emotional disturbances. *Medicaid Waivers Manual*, p II-4. He has normal intelligence and no significant physical problems. This means that to qualify, he must demonstrate that he has a severe emotional disturbance.

This level of care is described in *Institutional Levels of Care, Children's Long Term Support Program in Wisconsin* found online at [http://www.dhs.wisconsin.gov/bdds/waivermanual/CLTS\\_LOC.pdf](http://www.dhs.wisconsin.gov/bdds/waivermanual/CLTS_LOC.pdf). It requires him to demonstrate a "long-term, severe mental health condition diagnosed by a licensed psychologist or psychiatrist." He must also demonstrate persistent behaviors that create a danger to himself or others and require ongoing therapeutic support in order to be able to live at home and in the community." *Id.* p.8. The Level of Care manual goes on to state: "*The intensity and frequency of the required ongoing therapeutic support must be so substantial that without the support the child is at risk of inpatient psychiatric hospitalization.*" *Id.* (Emphasis in original)

The petitioner must meet all four of the following criteria to establish a severe emotional disturbance:

1. The child has a **Diagnosis** of a mental health condition; and
2. The child's mental health diagnosis or symptoms related to the diagnosis have existed and are expected to persist for a specific **Duration** of time; and
3. The child is in need of **Involvement with Service Systems** related to mental health support; and
4. The child exhibits **Severe Symptomology or Dangerous Behaviors** at a specific intensity and frequency of required interventions such that without this direct, daily community-based intervention, the child is at risk for institutionalization within a psychiatric hospital.

*Id.* (emphasis in original)

The petitioner meets the first criterion because he has autism. *Id.*, p.9. He meets the second because he has had these symptoms for over six months and they can be expected to last for at least another year. He meets the third criterion because he has an individualized education program and he receives psychotherapy. *Id.*, p. 10-11. The question is whether he exhibits severe symptomology or dangerous behaviors.

There are four standards for meeting severe symptomology and four for meeting dangerous behaviors. Severe symptomology involves psychotic symptoms, suicidality, violence, or anorexia/bulimia. All of these standards require that the child not only exhibit the behavior but that he must require "direct, daily interventions to avoid institutionalization in a psychiatric hospital." *Id.*, p.13. There are several categories of dangerous behaviors. They include high risk behaviors, self-injurious behaviors, aggressive and offensive behaviors, and lack of behavioral controls. *Id.*, p.14. All of these involve only the most serious behavioral problems a child can exhibit such as frequent cutting of himself, suicide attempts, or frequent sexual contact with strangers or those much older. All require intervention such as constant supervision, frequent police involvement, or hospitalizations. *Id.*, pp. 13-21.

The petitioner loses his temper easily, especially when he does not get his way. His tantrums include occasional kicking and hitting. He also has trouble reading nonverbal cues in which others indicate how they feel. These are significant problems, and there is little doubt that the services he could receive through the CLTS would help him alleviate these problems: He has already shown progress after receiving help from his school district and others. But the children's waiver is not available to everyone who might benefit from it. Instead, it is meant to provide benefits to only the most severely handicapped who without it will likely quickly end up in an institution. The petitioner simply does not all into this category because he does not demonstrate the symptomology or high risk behaviors required fit into that category. This can be seen by a review of pages 13-22 of the *Institutional Levels of Care, Children's Long Term Support Program in Wisconsin* found online at [http://www.dhs.wisconsin.gov/bdds/waivermanual/CLTS\\_LOC.pdf](http://www.dhs.wisconsin.gov/bdds/waivermanual/CLTS_LOC.pdf).

### **CONCLUSIONS OF LAW**

The Department correctly determined that the petitioner is ineligible for the Children's Long Term Support Waiver because he does not meet the psychiatric hospital level of care.

**THEREFORE, it is**

**ORDERED**

The petitioner's appeal is dismissed.

## REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## APPEAL TO COURT

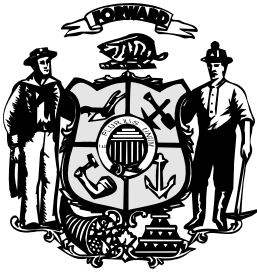
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 5th day of August, 2015

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\sMichael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on August 5, 2015.

St. Croix County Health & Human Services  
Bureau of Long-Term Support